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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL ALFONSO GUERRERO,

Defendant and Appellant.

F077126

(Super. Ct. No. SF019050A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Charles R. Brehmer, Judge.

William D. Farber, under appointment by the Court of Appeal; Manuel Alfonso Guerrero, in pro. per., for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Meehan, J., and Snauffer, J.

## **STATEMENT OF THE CASE**

By felony complaint filed on October 16, 2017, appellant Manuel Alfonso Guerrero was charged with evading a police officer with willful intent and in disregard for the safety of persons or property (Veh. Code, § 2800.2; count 1); transportation or sale of a controlled substance (methamphetamine) (Health & Saf. Code, § 11379, subd. (a); count 2); possession for sale of a controlled substance (methamphetamine) (Health & Saf. Code, § 11378; count 3); misdemeanor resisting or obstructing arrest (Pen. Code, § 148, subd. (a)(1); count 4); misdemeanor possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a); count 5); misdemeanor possession of controlled substance paraphernalia (Health & Saf. Code, § 11364; count 6); and misdemeanor destroying or concealing evidence (Pen. Code, § 135; count 7).

Pursuant to Penal Code section 1170, subdivisions (f) and (h)(3), the complaint alleged as to felony counts 1, 2, and 3 that Guerrero was not eligible to be sentenced to county jail owing to a prior serious or violent felony conviction. The complaint further alleged as to counts 1 and 2 one prior serious or violent felony conviction within the meaning of Penal Code sections 667, subdivisions (c)-(j) and 1170.12, subdivisions (a)-(e) and eight prison term enhancements within the meaning of Penal Code section 667.5, subdivision (b). At his arraignment on October 16, 2017, Guerrero pleaded not guilty to all counts, and he denied all special allegations, enhancements, and prior convictions.

On December 13, 2017, pursuant to a plea bargain with a negotiated disposition, Guerrero withdrew his not guilty plea to count 1 and pleaded no contest. He also admitted one prior serious or violent felony conviction and six prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). In exchange for his no contest plea to count 1, Guerrero was promised a sentence of six years in state prison to be served concurrent to Kern County case Nos. F168358A and BV008202A, plus six additional, consecutive one-year terms pursuant to Penal Code section 667.5, subdivision (b).

Before pleading no contest to count 1 and admitting the prior conviction, special allegations, and enhancements, Guerrero was advised of, and he waived, his constitutional rights to a preliminary hearing, trial by jury, to confront and cross-examine witnesses, to subpoena witnesses for his defense and to testify in his own defense, and his privilege against self-incrimination. He also signed a felony advisement of rights, waiver, and plea form.<sup>1</sup> Guerrero's trial counsel joined in the waiver of his rights, concurred in his plea, and stipulated to a factual basis for Guerrero's no contest plea and admissions based on the police reports. Finding that Guerrero understood his constitutional rights and made a knowing and intelligent waiver of them, that his plea was free and voluntary, and finding a factual basis for his plea and admissions, the trial court accepted Guerrero's plea and admissions and found him guilty on count 1; found that Guerrero suffered one prior serious or violent felony conviction; and found true six prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). Pursuant to the plea bargain, and on motion of the prosecutor, the court dismissed and ordered stricken all remaining counts, special allegations, and enhancements pursuant to Penal Code section 1385.

On February 15, 2018, the court denied probation, and pursuant to the plea bargain, sentenced Guerrero to the upper term of three years in state prison on count 1, doubled to six years pursuant to Penal Code section 667, subdivision (e). The court ordered Guerrero's sentence on count 1 to be served concurrent with the sentence imposed in Kern County case Nos. BF168358A and BV008202A. The court also sentenced Guerrero in the present case to six 1-year consecutive terms pursuant to Penal Code section 667.5, subdivision (b). The court also imposed a restitution fine in the amount of \$300 pursuant to section Penal Code 1202.4, subdivision (b) and imposed, but suspended, a parole revocation fine in an equal amount pursuant to Penal Code

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<sup>1</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

section 1202.45. The court imposed an assessment of \$30 pursuant to Government Code section 70373 and a court security fee in the amount of \$40 pursuant to Penal Code section 1465.8, subdivision (a)(1). The court awarded Guerrero 128 days of actual credit plus 128 days of local conduct credit for a total of 256 days of presentence custody credit.<sup>2</sup>

### **STATEMENT OF APPELLATE JURISDICTION**

Guerrero filed a timely notice of appeal on March 2, 2018. This appeal is from a final judgment after a no contest plea and is based on the sentence or other matters occurring after the plea. (Pen. Code, § 1237 and Cal. Rules of Court, rule 8.304(b)(4)(B).)

### **STATEMENT OF FACTS**

Guerrero pleaded no contest in count 1 to a violation of Vehicle Code section 2800.2 as alleged in the felony complaint. He also admitted one prior serious or violent felony conviction in violation of Penal Code section 460, subdivision (a) in Kern County case No. DF006578 and six prior prison terms in Kern County case Nos. DF010819A, BF148214A, SF017205B, BF163806A, DF006578A, and DF007277A. Guerrero stipulated to a factual basis for his no contest plea based on the sheriff's reports in case No. SF019050A.

According to the sheriff's report in case No. SF019050A, Guerrero was detained and arrested on October 10, 2017 at 29501 Paterson Road in Shafter on outstanding felony arrest warrants following a police pursuit of his truck. During the pursuit, and to evade officers, at speeds up to 90 miles per hour, Guerrero ran stop signs and, in the opinion of pursuing officers, drove with wanton disregard for public safety. During the pursuit, a cell phone belonging to Guerrero was discarded near Pond Street and Stradley

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<sup>2</sup> On May 17, 2018, Guerrero requested that the trial court amend or correct the abstract of judgment to reflect the award of presentence custody credit in case No. SF019050A. On November 26, 2018, a corrected abstract of judgment was filed.

Avenue and 17.8 grams of methamphetamine wrapped in blue paper were discarded onto Casey Avenue. Pursuing officers saw Guerrero throw the blue object out of his truck onto the shoulder of Casey Avenue.

Guerrero was ultimately located, detained, and arrested. A glass smoking pipe and 2.5 grams of methamphetamine were found in his pocket. A baggie containing 2 grams of methamphetamine was found behind his truck. His cell phone and 17.8 grams of methamphetamine wrapped in a blue paper towel were retrieved from where they had been discarded during the pursuit.

After his arrest, Guerrero told an arresting officer that he fled and did not stop because he was scared. He acknowledged discarding his cell phone during the pursuit but denied throwing the methamphetamine. Guerrero said that an unknown female who was in his truck during the pursuit had thrown out her “dope.” In the opinion of arresting officers, the quantity of methamphetamine found in Guerrero’s possession and discarded from his truck during the pursuit was more than for personal use. Based on the amount of methamphetamine involved, sheriff’s deputies believed that Guerrero possessed and transported the controlled substance for purpose of sales.

#### **APPELLATE COURT REVIEW**

Guerrero’s appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Guerrero was advised he could file his own brief with this court. By letter on December 7, 2018, we invited Guerrero to submit additional briefing.

In response to our letter, Guerrero sent letter briefs dated January 2, 2019 and January 9, 2019. The letters were forwarded to his appellate counsel, who acknowledged receipt on February 8, 2019. The court has read and considered Guerrero’s letter briefs.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

**DISPOSITION**

The judgment is affirmed.